BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.	Investigation 12-10-013 (Filed October 25, 2012)
And Related Matters.	Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO RUTH HENRICKS' AND THE COALITION TO DECOMMISSION SAN ONOFRE'S (CDSO) MOTION TO STAY COLLECTION OF RATES BASED ON SAN ONOFRE REVENUE REQUIREMENTS

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Dated: July 5, 2017

Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission"), Southern California Edison Company ("SCE") responds to the Motion to Stay Collection of Rates Based on San Onofre Revenue Requirements ("Motion") filed by Ruth Henricks and The Coalition to Decommission San Onofre ("CDSO") (collectively, Henricks and CDSO are referred to as the "Moving Parties"). The Motion should be denied.

I.

EXECUTIVE SUMMARY

The Motion is an unlawful, unauthorized, premature and unnecessary effort to block implementation of the settlement the Commission unanimously approved in D.14-11-040. Specifically, the Motion seeks a stay of collection of rates, "so that SCE, in the future, cannot use San Onofre to calculate SCE's revenue requirements."[1] The Motion also requests a ruling that no further Advice Letters or other mechanisms seeking revenue requirements related to San Onofre Nuclear Generating Station ("SONGS") should be permitted.[2] This Motion seeks essentially the same relief as was sought in CDSO's February 13, 2017, motion to stay the collection of rates,[3] which remains pending. As shown in SCE and San Diego Gas & Electric Company's (collectively, the Utilities) response to CDSO's February 13 motion, the Moving Parties fail to meet the heavy burden of justifying a stay.

The Motion effectively seeks to bypass the process established in the Assigned Commissioner and Administrative Law Judge's December 13, 2016, Ruling, which directs the parties to meet and confer to discuss potential changes to the existing settlement. The December 13 Ruling states that, if and only if that process runs its course and does not lead to agreement, the parties are to file a joint report setting forth the parties' recommendations for next procedural

1 Motion at 4.
2 *Id.* at 3.
3 The Coalition to Decommission San Onofre's Motion to Stay Decision D.14-11-040 and Its Implementation (Feb. 13, 2017).

steps regarding the pending petitions for modification of D.14-11-040.[4] The ALJ recently granted a joint request to extend the deadline for the meet and confer process to August 15, 2017.[5] Nevertheless, the Motion asks the Commission to take a substantive action which presumes (1) that the meet and confer process will be unsuccessful, (2) the Commission will invalidate the current settlement, and (3) the Commission will set new rates before it conducts any inquiry into the reasonableness of SCE's conduct. For these reasons, and as discussed further below, the relief sought by the Motion is both inconsistent with the December 13 Ruling and due process considerations.

II.

THE MOTION SHOULD BE DENIED

The Commission unanimously approved a settlement to resolve the SONGS OII in Decision D.14-11-040, over the objections of the Moving Parties. Under the terms of the settlement, the Utilities' rates do not recover the costs of the replacement steam generators as of February 1, 2012, the day following the start of the outages.[6] In addition, SCE does not recover in rates the incremental operations and maintenance costs it incurred in 2012 in response to the outages.[7] Finally, the Utilities removed the remaining SONGS investments from rate base as of February 1, 2012.[8] The Utilities recover those investments over 10 years at a greatly reduced rate of return (about 2.62% for SCE), which covers only the cost of debt and 50% of the cost of

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4 Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge Directing Parties to Provide Additional Recommendations for Further Procedural Action and Substantive Modifications to Decision 14-11-040 ("December 13 Ruling"), at 42-43 (Dec. 13, 2016).

5 Administrative Law Judge's Ruling Granting Motion of the Meet and Confer Parties to Extend Dates for All-Party Meet and Confers, and Request Additional Information ("May 26 ALJ Ruling"), at 6 (May 26, 2017).

6 Decision Approving Settlement Agreement as Amended and Restated by Settling Parties (D.14-11-040), at 5 (Nov. 20, 2014).

7 *Id.* at 6.

8 *Id.* at 5.

preferred stock (with no return on equity). In approving the settlement, the Commission found that it was lawful, reasonable, and in the public interest.[9]

The Utilities have implemented the settlement in accordance with its terms.[10] Utility customers have received substantial benefits from the settlement. The Utilities have refunded or will refund nearly $1.6 billion to customers, a larger rate reduction than was forecast at the time the settlement was approved due to recovery from third parties and other cost offsets. These included credits for amounts paid from the Nuclear Decommissioning Trusts, for 95% of SCE's share of net recovery from NEIL (the SONGS insurer), and for a settlement with the Department of Energy. Customers also will receive net proceeds from expected sales of nuclear fuel.

Based on current rate design, an average residential customer pays approximately $1.90 per month under the SONGS settlement.

Separate from the settlement, the costs of decommissioning SONGS are being paid out of the decommissioning trusts established for that purpose, which are fully funded. The motion does not appear to object to the payment of decommissioning costs.[11]

A. The Moving Parties Do Not Meet the Standard for a Stay

The Moving Parties cannot meet the CPUC's standard for granting a stay, which considers harm to the moving party, whether the moving party is likely to prevail on the merits, a balance of harms to the parties, and other relevant factors.[12] SCE incorporates by reference the arguments in the Utilities' response to the February 13, 2017, motion: the Moving Parties fail to show a likelihood of success on the merits on their challenge to the rates established by D.14-11-

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9 *Id.* at 7.

10 *See, e.g.*, Advice 3499-E (U 338-E) effective December 1, 2016 (submitting for approval changes to tariffs to implement the 2017 SONGS revenue requirement in compliance with D.14-11-040).

11 Motion at 2.

12 *See Order Granting Party Status and Denying Request for Stay of Decision 07-06-038* (D.07-08-034), at 4 (Aug. 23, 2007); *see also Order Denying Stay of Decision D.07-01-004* (D.07-040-48), at 2 (Apr. 12, 2007); *Order Denying Motions for Stay of Decision 04-05-057*, at 2 (D.04-08-056) (Aug. 19, 2004).

040,[13] and fail to show that the balance of harms weighs in their favor.[14] The Moving Parties also fail to show irreparable harm in the absence of a stay of the collection of previously-authorized rates. The Utilities are collecting the settlement rates subject to refund. Because the Moving Parties filed a timely application for rehearing of D.14-11-040 which remains pending,[15] if the CPUC were to find that a modification to the settlement is warranted, the retroactive ratemaking doctrine would not prevent the Commission from ordering a refund. A stay, therefore, is neither necessary nor appropriate.

B. The Motion Should Be Denied as Procedurally Improper

The Motion should be denied as procedurally improper, for the same reasons set forth in the Utilities' February 28, 2017 Response.[16] First, the Commission has never disavowed its finding in D.14-11-040 that the settlement is reasonable, lawful, and in the public interest. The December 13, 2016, Assigned Commissioner's and Administrative Law Judge's Ruling, which is not a Commission decision, does not reach a contrary conclusion. While that Ruling raises concerns about the potential impact of the unreported ex parte communications on the negotiation and review of the settlement,[17] it does not reach a definitive conclusion on that issue.[18] Instead, the December 13 Ruling directs the parties to meet and confer regarding potential changes to the settlement. If the parties, or a subset representing a broad range of interests, reach agreement, they are directed to present it to the Commission for approval. If, however, no agreement is reached, the December 13 Ruling directs the parties to file and serve a

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[13] Response of Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902 E) to The Coalition to Decommission San Onofre's Motion to Stay Decision 14-11-040 and Its Implementation ("February 28, 2017 Response") at 3-5 (Feb. 28, 2017).

[14] *Id.* at 5-6.

[15] Ruth Henricks' and The Coalition to Decommission San Onofre's (CDSO) Application for Rehearing Decision D.14-11-040 (20 November 2014, Issued 25 November 2014) (Dec. 18, 2014).

[16] February 28, 2017 Response at 6-8.

[17] December 13 Ruling at 34.

[18] *Id.* at 29, 31, 33-34.

joint report setting forth "further procedural and substantive recommendations of the parties for determination of the pending petitions for modification of D.14-11-040."[19]

On April 26, 2017, the parties engaged in the meet and confer process, including the Moving Parties, jointly requested that the ALJ extend the deadline for completion of the meet and confer process to August 15, 2017.[20] By ruling dated May 26, 2017, the ALJ granted this request.[21]

The relief sought by the Motion is premature and inconsistent with the December 13 Ruling, which makes clear that the time for parties to propose further procedural steps is after the meet and confer process among the parties has concluded. At that point, the next steps would be to consider the pending petitions for modification of D.14-11-040. The relief sought by the Motion cannot be considered until the Commission acts on those petitions.

Even if the Commission were to grant the petitions for modification and rescind its approval of the settlement – an action that SCE believes is not supported by the record – the Commission could not lawfully reduce existing rates without a hearing.[22]

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19 *Id.* at 43.

20 Joint Motion of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902 E), The Utility Reform Network, The Office of Ratepayer Advocates, Coalition of California Utility Employees, Ruth Henricks, The Alliance for Nuclear Responsibility, California State University, Western Power Trading Forum, Direct Access Customer Coalition, Coalition to Decommission San Onofre, California Large Energy Consumers Association, and Women's Energy Matters to Extend Dates for All-Party Meet and Confers (Apr. 26, 2017).

21 May 26 ALJ Ruling at 5-6.

22 Assigned Commissioner's and Administrative Law Judge's Ruling on Legal Questions Set Forth in Scoping Memo and Ruling, at 9, 11, 18 (April 30, 2013); Assigned Commissioner's and Administrative Law Judges' Ruling Determining the Phase 2 Scope and Schedule, at 3-4 (July 31, 2013).

III.

THE FACTUAL ASSERTIONS IN THE MOTION ARE ERRONEOUS

As purported support for the relief sought, the Motion sets forth the Moving Parties' assertions concerning various issues concerning SONGS. While these arguments are premature given that the settlement remains in place, these factual assertions are erroneous.

A. The MHI Arbitration Award Did Not Find that SCE Acted Imprudently

The Motion erroneously suggests that the decision of the Arbitral Tribunal in the arbitration among SONGS Owners and Mitsubishi Heavy Industries ("MHI") somehow undermines the settlement's provision for recovery of SONGS costs.[23] The Moving Parties' argument seems to be that because the SONGS owners alleged that MHI engaged in fraud, and the panel did not accept that argument, the Utilities are responsible for the failure of the replacement steam generators. This argument is without merit.[24]

The suggestion that the Utilities should bear SONGS costs because the panel did not agree with their claim that MHI engaged in fraud is a non sequitur. Under well-established precedent, utilities are allowed to recover their costs, even if facilities fail, unless the failure results from utility imprudence.[25] The finding that MHI did not engage in fraud in no way establishes that SCE acted imprudently.

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[23] Motion at 3.

[24] To the extent the Motion implies that the litigation against MHI was imprudent because the fraud claim was not successful, Motion at 3, 10-11, that implication is incorrect. The principal claim in the arbitration was that MHI breached the contract it had entered into with SONGS owners to supply the replacement steam generators, and that the limitation on liability in the contract failed of its essential purpose because of the inability to repair the steam generators with due diligence. The SONGS owners also alleged fraud, but that claim was a secondary one in the arbitration that received far less attention from the arbitration panel. In any case, SCE acted prudently in pursuing all available claims against MHI. The fact that a well-respected arbitrator dissented from the award and would have awarded the SONGS owners substantial damages demonstrates that the pursuit of the claims was prudent.

[25] D.11-09-017, 2011 WL 4425407 (Cal. P.U.C. Sept. 8, 2011); D.92-08-036, 45 CPUC 2d 274 (1992).

In fact, the arbitration majority's decision severely undercuts the allegation that SCE acted imprudently. The majority found that MHI had acted reasonably in the design of the replacement steam generators, and that the failure was due to an unforeseen event.[26] The majority also found that MHI followed industry standard practices in the replacement steam generator design. The steam generator failure was caused by in-plane fluid-elastic instability, but MHI's failure to analyze for in-plane FEI was determined to be reasonable and in line with industry practice.[27] The majority concluded that even if MHI had known about the error in its computer code, it either would not have changed the design or would have added anti-vibration bars, which would not have prevented the failure.[28]

If, as the majority found, MHI acted reasonably in the design, then there would be no basis to find that SCE, which does not design or manufacture steam generators, acted imprudently in regard to MHI's failure to predict the unforeseen characteristics of the replacement steam generators that ultimately led to their failure.[29]

The Motion asserts, without citation, that the arbitration decision "reflects SCE's admissions that its decisions to proceed with the design were taken in spite of what was then known by SCE."[30] There is no evidence in the arbitration decision, or in any of the many design-era documents that SCE has made public, that SCE was aware that MHI's design proposal was flawed. In fact, SCE reasonably relied on MHI's assurance that its design of the replacement steam generators was safe and reliable.[31] The Motion cites a November 2004 letter from SCE's Vice President to MHI's General Manager, which emphasized the importance of care in the

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[26] Arbitration Award ¶¶ 454, 1142, 1430, 1468-69, 1475.

[27] *Id.*, ¶¶ 454-55, 471, 502, 1430, 1468-69, 1475.

[28] *Id.*, ¶¶ 554, 1142, 1250, 1428, 1439.

[29] Even if MHI had acted imprudently, its imprudence would not be imputed to SCE. As long as SCE itself acted prudently in its oversight of MHI, no disallowance would be appropriate. *E.g.*, D.99-11-022, 1999 WL 1957791, at *3 (Cal. P.U.C. Nov. 4, 1999).

[30] Motion at 3.

[31] Summary of Key Issues Raised During Design Oversight Meetings with MHI (SCE White Paper), at 3-4, https://www.songscommunity.com/docs/minutes/White_Paper-Summary_of_Key_Issues_Raised_During_Design_Oversight_Meetings_with_MHI_Final.pdf.

design, particularly with respect to anti-vibration bar design, seismic design, and moisture separators.[32] Far from demonstrating imprudence, this letter shows that SCE appropriately raised concerns and urged MHI to take extra precautions to ensure that errors were not made in the design. MHI responded to the letter, assuring SCE that it would exercise such precautions to avoid the risks of failure.[33] The letter does not support the Moving Parties' suggestion that SCE was aware of design flaws;[34] nor *could* SCE have been aware of the flaw in the design at the time of this letter, because the letter was sent before the design process had begun. The Motion also ignores the extensive record of communications between SCE and MHI in the design process that followed this letter, which show that SCE diligently raised questions and MHI consistently assured SCE that the design would be safe and reliable.

The Motion mentions that SCE chose to specify Inconel 690[35] for replacement tubes for the steam generators,[36] but the Moving Parties acknowledge that this material had become industry standard.[37] The Motion suggests that this design choice led to the removal of the stay cylinder and other design features used in an earlier era, but the Motion does not explain why these choices were inappropriate. In fact, these aspects of the design of the SONGS replacement steam generators were also industry standard. Nor does the Motion support its assumption that these design features led to the steam generator failure.[38] The arbitration panel majority concluded that the failure had nothing to do with any design choice related to Inconel 690 or the removal of the stay cylinder. Instead, the majority found that the failure was due to a first-of-a-

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[32] Motion at 6-7.
[33] Letter from Mitsubishi Heavy Industries, Ltd. dated March 18, 2005, http://www.songscommunity.com/docs/design/MHI_Response_to_Nunn.pdf.
[34] Motion at 6.
[35] Inconel 690 was the material used to make the tubes. While having other positive attributes, Inconel 690 has lower heat conductivity than the original steam generators' tube material. Arbitration Award, ¶¶ 1142, 1396.
[36] Motion at 5-6.
[37] *Id.* at 5.
[38] *Id.* at 5-6.

kind phenomenon (in-plane fluid elastic instability) that resulted from an entirely different design choice (the "zero-gap" approach), which was likewise industry standard.[39]

The Motion quotes (without attribution) the MHI "root cause report" to allege that SCE rejected several proposed design changes due to an alleged concern that such changes would require a license amendment request to the Nuclear Regulatory Commission.[40] This is, however, an MHI document, and SCE does not agree with it. In addition, the Motion fails to note that: (1) MHI told SCE that those design changes were not needed and would not materially reduce the predicted thermal-hydraulic conditions;[41] (2) the arbitration panel agreed that these changes were not needed and further said that had the adverse thermal hydraulic conditions been known, MHI either would not have changed the design or would have put in more anti-vibration bars, which would not have prevented the problem;[42] and (3) there is no evidence that SCE rejected the proposed design changes for any reason other than that MHI said they were unnecessary and unhelpful, and specifically no evidence that SCE rejected any design change because of a concern that it would not meet the 10 C.F.R. § 50.59 criteria.[43]

The Moving Parties' assertion that SCE "predict[ed]" a recovery of over $5 billion in the MHI arbitration[44] is also false. SCE never offered such a prediction.[45]

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39 Arbitration Award ¶¶ 1142, 2062, 2155.
40 Motion at 6.
41 Arbitration Award ¶ 306.
42 *Id.* ¶¶ 554, 1142, 1250, 1428, 1439.
43 *Id.* ¶¶ 181-82, 186, 1930, 2235, 2285.
44 Motion at 8-9.
45 *See, e.g.*, Edison International 2016 Form 10-K, at 96 ("There is no assurance that there will be any recovery from MHI or that, if there is a recovery, it will equal or exceed the litigation costs incurred to pursue the recovery."), http://www.edison.com/content/dam/eix/documents/investors/corporate-governance/2016-annual-report.pdf; Edison International 2015 Form 10-K, at 99, http://www.edison.com/content/dam/eix/documents/investors/corporate-governance/2015-eix-sce-final-annual-report.pdf; Edison International 2014 Form 10-K, at 100, http://www.edison.com/content/dam/eix/documents/investors/corporate-governance/2014-eix-sce-annual-report.pdf.

B. *Ex Parte* Communications Did Not Affect the SONGS Settlement

There is no evidence to support the Moving Parties' claim of conspiracy between SCE and the CPUC in the SONGS OII proceeding. The Moving Parties quote an email from the ALJ to SCE's Russ Worden regarding a telephone call between them to discuss phasing the OII.[46] The Motion erroneously implies that such discussion was improper. CDSO has previously cited this discussion as the basis for multiple motions to reassign ALJ Darling, each of which was denied by the Chief Administrative Law Judge in consultation with the President of the Commission. This discussion of phasing of the OII addressed the "schedule" of the proceeding, which the ex parte rules define as a "procedural" matter that is explicitly allowed and need not be reported.[47] The ALJ similarly considered the discussion to have been procedural, and the CPUC has never held otherwise. To the contrary, the CPUC has dismissed Henricks' claims that this discussion evidences improper conduct, finding that this "short set of e-mails" consisted of procedural communications.[48]

The Moving Parties also erroneously assert that SCE and the CPUC "implemented the deal" prior to the shutdown of the plant in June 2013.[49] Their citation to internal emails at Edison on May 29, 2013, does not reflect that any deal was reached between SCE and the CPUC (or anyone else).[50] On the contrary, the emails show that no agreement was reached in Warsaw (or otherwise), because they express a hope that a settlement between parties *could* be reached. In fact, the individuals who exchanged these emails were not involved in any settlement discussions. Their hope that SCE could reach a settlement with the OII parties prior to a

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46 Motion at 7.
47 Rule 8.1(c).
48 Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company (D.15-12-016), at 12 (Dec. 3, 2015); Chief Administrative Law Judge's Ruling Denying Motion for Reassignment, at 2 (July 10, 2015); Response of Southern California Edison Company (U 338-E) to the Coalition to Decommission San Onofre's Motion for Reassignment, at 6 (July 29, 2015).
49 Motion at 7.
50 *Id.* at 7-8.

shutdown never came to fruition, as SCE announced its decision to shut down SONGS a few days after these emails were sent. SCE's decision to permanently shut down SONGS was based on its independent evaluation that a shutdown was the least-cost option to customers—a decision the arbitration majority concluded was economically reasonable.[51] It was not based on any "deal" to obtain cost recovery, as no such agreement was formed. The Utilities negotiated at arms' length with TURN and ORA over a period of nine months before the parties agreed to a settlement on cost recovery.

The Motion erroneously states that "[t]he then-CPUC President engaged in a pattern of ex parte communications in order to arrive at the settlement agreement …."[52] This assertion is refuted not only by the internal SCE emails that the Motion cites,[53] but also by the sworn declaration of Ed Randolph, who witnessed the Warsaw meeting and affirmed that no agreement was reached.[54] The notes of the meeting expressly contemplate that a settlement would be negotiated among the parties and presented to the CPUC for approval,[55] which is inconsistent with the theory that a deal was struck in Warsaw.

The Moving Parties cite a number of inapposite cases with dissimilar facts, regarding the harms of *ex parte* communications with a neutral decisionmaker in state or federal court where such contact is forbidden.[56] These citations ignore that *ex parte* communications are expressly allowed under CPUC rules and reportable only under certain conditions. Any allegation that President Peevey was unable to judge the settlement fairly fails, because there is no evidence that President Peevey's comments during the Warsaw meeting made him unable to be impartial in

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51 Arbitration Award ¶ 1985.
52 Motion at 11.
53 *Id.* at 7-8.
54 Declaration of Edward F. Randolph in Response to Administrative Law Judge Questions Received by Email on June 1, 2015 at 1-2 (Appendix A to Amended Administrative Law Judge's Ruling Finding Violations of Rule 8.4, Requiring Reporting of Ex Parte Communications, and Ordering Southern California Edison Company to Show Cause Why It Should Not Also Be Found in Violation of Rule 1.1 and Be Subject to Sanctions for All Rule Violations (Aug. 5, 2015)).
55 Attachment 1 to Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company (D.15-12-016), Ex. A-2 (Dec. 3, 2015).
56 Motion at 11-12.

voting to approve the settlement nearly two years later. CPUC precedent creates a strong presumption that Commissioners are impartial, unless the moving party can prove that the Commissioner had an "unalterably closed mind."[57] The Moving Parties do not even attempt to meet this burden in their Motion. And, as the CPUC has recognized, decisions are made by the Commission as a whole.[58] Here, four Commissioners who did not attend the meeting in Warsaw voted for the settlement based on their independent evaluation of its merits.

C. CPUC Precedent Does Not Support the Motion to Stay

The Moving Parties argue that two Commission precedents support their motion to stay: the Commission's 1994 decision imposing a disallowance on SCE in connection with a steam pipe rupture at Mohave Generating Station ("Mohave"), and the Commission's 1985 decision regarding a design defect at Pacific Gas & Electric's Helms Pumped Storage Project ("Helms"). In fact, both precedents weigh heavily *against* the relief sought by the Moving Parties.

The Mohave decision followed a steam pipe explosion that resulted in death and serious injury.[59] The Commission found that Mohave had a "long history" of operating at hotter temperatures than the plant had been designed to withstand, and that SCE had unreasonably "failed to take adequate steps" to prevent steam pipe cracks in light of these temperature problems.[60] As a result, the Commission held that SCE could not recover "the costs resulting from the accident," and directed the ALJ to conduct a second phase of the Mohave proceeding to quantify the disallowance.[61] In the same decision, the Commission held that "[t]he dollars at risk for disallowance shall include *only* costs in excess of what the company would have incurred, including necessary power purchases while the plant was shut down for repairs, had [SCE taken

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57 D.07-12-020, 2009 WL 2910746 (Cal. P.U.C. Aug. 20, 2009); D.06-12-042, 2006 WL 3831232, at *12 (Cal. P.U.C. Dec. 14, 2006); D.05-06-062, 2005 WL 1625321 (Cal. P.U.C. June 30, 2005); D.04-03-009, at 47-50, 2004 WL 579352 (Cal. P.U.C. Mar. 16, 2004).

58 D.07-09-050, 2007 WL 2766472 (Cal. P.U.C. Sept. 20, 2007).

59 D. 94-03-048, 53 CPUC 2d 452 (Mar. 9, 1994).

60 *Id*.

61 *Id.*

actions to avoid the steam pipe explosion]."[62] In a subsequent decision, the Commission approved a settlement between SCE and ORA that imposed a disallowance on SCE that was approximately half-way between SCE's and ORA's respective estimates of "the actual costs that Edison had incurred because of the accident," including replacement power and repair costs.[63]

If the Mohave precedent were applicable to the SONGS OII—which it is not, since there is no evidence of utility imprudence in the instant proceeding, and the steam generator failure did not result in death or injury—the precedent would strongly support SCE's position that the existing settlement is a fair resolution of the OII. In imposing a disallowance on SCE for Mohave, the Commission expressly held that such disallowance would be limited to the amount necessary to hold ratepayers harmless in light of the accident. Applying the same principle to SONGS would lead to the result set forth in the existing settlement. Suspending rate collections under the existing settlement is therefore not supported by the outcome in Mohave.

Likewise, the Helms precedent cited by the Moving Parties strongly supports SCE's position that the existing settlement should stand. In that decision, the Commission addressed $240 million in capital expenditures that PG&E spent to reconstruct a portion of pipeline (the "Lost Canyon pipe") that failed as a result of alleged design defects by PG&E's vendor.[64] The only costs that the Commission discussed as a basis for a disallowance in Helms, however, was the $240 million in actual costs incurred as a result of the defect, with no disallowance related to the balance of the Helms plant costs. Application of the Helms precedent to the SONGS OII, like the Mohave precedent, would thus support the existing settlement, which disallows the cost of the RSGs from the day after they failed. The Helms decision does not support disallowance of other investment or costs, as the Motion proposes.

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62 *Id.* (emphasis added).
63 D. 96-07-055, 67 CPUC 2d 86 (July 17, 1996).
64 D. 85-08-102, 18 CPUC 2d 700 (Aug. 21, 1985).

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